

DOCKET FILE COPY ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

DA 94 - 1613

In the Matter of )  
)  
Bell Atlantic Telephone Companies )  
Tariff F.C.C. No. 1, )  
Transmittal No. 690 )  
)  
NYNEX Telephone Companies )  
Tariff F.C.C. No. 1, )  
Transmittal No. 328 )  
)  
Pacific Bell Tariff F.C.C. No. 128, )  
Transmittal No. 1738 )  
)  
US West Communications, )  
Transmittal No. 550 )

CC Docket No. 94 - 157

**MEMORANDUM OPINION AND ORDER**

Adopted: December 28, 1994; Released: December 29, 1994

By the Chief, Common Carrier Bureau:

**I. INTRODUCTION**

1. On September 1, 1994, Bell Atlantic Telephone Companies (Bell Atlantic) and NYNEX Telephone Companies (NYNEX) filed the above-captioned transmittals to increase their rates for interstate access.<sup>1</sup> The supporting documentation accompanying these transmittals shows that the carriers have adjusted their price cap index (PCI) levels upward to reflect exogenous treatment for the costs of certain Other Post-Employment Benefits (OPEBs). The changes in OPEB costs of these two local exchange carriers (LECs) are caused by their implementation of the Statement of Financial Accounting

---

<sup>1</sup> See Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690 (filed Sept. 1, 1994); NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328 (filed Sept. 1, 1994).

Standards - 106 (SFAS-106), as previously required by this Bureau.<sup>2</sup> The above-captioned transmittals filed by Pacific Bell (Pacific) and US West Communications (US West) do not propose any changes to their tariffed rates, terms or conditions for interstate services.<sup>3</sup> Rather, they state that the purpose of these transmittals is to advise the Commission that they have revised their PCI levels upward to reflect exogenous treatment for certain OPEB costs.

2. These transmittals represent the first proposals by LECs to adjust their PCI levels to reflect their implementation of SFAS-106 since the Court of Appeals decision in *Southwestern Bell Telephone Company v. FCC*.<sup>4</sup> In that case, the United States Court of Appeals for the District of Columbia Circuit reversed and remanded an FCC Order in which the Commission concluded that increases in booked OPEB costs caused by the implementation of SFAS-106 were not eligible for exogenous treatment.<sup>5</sup> Although the Court directed the FCC to grant exogenous treatment to such costs, it remanded the proceeding to the Commission to calculate the specific amount of OPEB increases that are eligible for exogenous treatment.

3. In this Order, the Common Carrier Bureau (Bureau) suspends the tariffs filed by Bell Atlantic and NYNEX for one day, initiates an investigation and imposes an accounting order. We will designate issues for investigation, name parties to the investigation and establish a pleading cycle for the investigation in a subsequent Order. We also dismiss the US West and Pacific transmittals, because we conclude that they are procedurally deficient.

---

<sup>2</sup> Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "employers Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, 8 FCC Rcd 1024 (1993)(*OPEB Order*).

<sup>3</sup> Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1738 (filed Sept. 1, 1994); US West Communications, Transmittal No. 550 (filed Oct. 14, 1994)

<sup>4</sup> *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

<sup>5</sup> See *OPEB Order* at 1031.

## **II. BACKGROUND**

4. The treatment of changes in booked OPEB expenses attributable to the implementation of SFAS-106 by LECs under price cap regulation has been the subject of extensive proceedings before the Commission. To understand the context in which we view the instant transmittals, it is useful to summarize briefly those prior proceedings.

### **A. SFAS-106**

5. In December 1990, the Financial Accounting Standards Board (FASB) adopted the Statement of Financial Accounting Standards - 106 (SFAS-106), "Employers Accounting for Postretirement Benefits Other Than Pensions." For those companies subject to generally accepted accounting principles (GAAP), SFAS-106 established new financial accounting and reporting requirements for accounting periods beginning after December 15, 1992, for any employer offering postretirement benefits other than pensions to its employees. OPEBs typically consist of health and dental care benefits and life insurance.

6. Before adopting SFAS-106, carriers accounted for OPEBs on a "pay-as-you-go" or cash basis, recognizing the amounts actually paid on behalf of employees in the current accounting period, the so-called "ongoing amounts." SFAS-106 now requires companies to account for OPEBs on an accrual basis, treating OPEBs as a form of deferred compensation earned by employees during their working years. Thus, the costs of OPEBs are recognized during the years the benefits are earned, rather than during the years when the amounts of the benefits are actually paid by the company.

7. In addition to the change from cash-based to accrual accounting, SFAS-106 requires companies to recognize on their books the amount of their unfunded obligation for OPEBs to retirees and to active employees existing as of the date of their adoption of SFAS-106. This unfunded obligation reflects the amount that a company would have accrued on its books as of the effective date of the accounting change if it had been operating under the accrual method and is referred to as the "transitional benefit obligation" (TBO). SFAS-106 permits companies whose benefits plans have active participants either to recognize the TBO as an immediate expense or to defer and to amortize it over the average remaining benefits period of active plan participants. If the average remaining service period is less than 20 years, the employer may elect to use a 20-year period.

8. Since 1985, the Commission has followed a policy of conforming regulatory accounting for carriers to GAAP, including new FASB standards, unless adoption of the principle or practice conflicts with the Commission's regulatory objectives. *See* Section 32.16 of the Commission's rules, 47 C.F.R. § 32.16. In December 1991, the Bureau

issued an Order approving the requests of two local exchange carriers (LECs) to adopt SFAS-106-type accounting for OPEBs, on or before January 1, 1993.<sup>6</sup> The Bureau declined, however, to allow carriers to adopt the FASB option of immediately recognizing the TBO, because the amounts involved were so large that booking them as one-time expenses would have distorted the LECs' earnings during the period affected. Instead, the Bureau authorized the carriers to use the other SFAS-106 option of amortizing the TBO expense either over a 20-year period or over the average remaining service period of active plan participants.<sup>7</sup>

## **B. Price Caps and Changes in GAAP**

9. In its price cap decisions,<sup>8</sup> the Commission replaced cost-plus rate of return regulation with an incentive-based system of regulation that rewards carriers whose performance exceeds a benchmark measure of efficiency improvements. The benchmark, known as the price cap index or PCI, is adjusted each year based on inflation in the economy (Gross National Product Price Index, or GNP-PI), minus a productivity factor.<sup>9</sup> The productivity factor for LECs is set to reflect the historical productivity growth of the telephone industry, which has exceeded the productivity of the economy as a whole, plus a 0.5 percent Consumer Productivity Dividend. Carriers that are able to generate

---

<sup>6</sup> See *Southwestern Bell Corporation, GTE Service Corporation, Notification of Intent To Adopt Statement of Financial Accounting Standards, No. 106, Employer's Accounting for Postretirement Benefits Other Than Pensions*, 6 FCC Rcd 7560 (Com. Car. Bur. 1991).

<sup>7</sup> *Id.* See also *Uniform Accounting for Postretirement Benefits Other Than Pensions* in Part 32, (May 4, 1992)(*RAO Letter 20*).

<sup>8</sup> See *Policy and Rules Concerning Rates for Dominant Carriers, Report and Order and Second Further Notice*, 4 FCC Rcd 2873 (*AT&T Price Cap Order*), *modified on recon.*, 6 FCC Rcd 665 (1991)(*AT&T Price Cap Reconsideration Order*); *Policy and Rules Concerning Rates for Dominant Carriers, Second Report and Order*, 5 FCC Rcd 6786 (1990) and *Erratum*, 5 FCC Rcd 7664 (1990)(*LEC Price Cap Order*), *modified on recon.*, 6 FCC Rcd 2637 (1991)(*LEC Price Cap Reconsideration Order*), *further recon.*, 6 FCC Rcd 4524 (1991)(*ONA Part 69 Order*), *second further recon.*, 7 FCC Rcd 5235 (1992), *aff'd*, *National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993).

<sup>9</sup> The LEC price cap rules require carriers to elect a productivity offset of either 3.3 percent or 4.3 percent. Election of the higher productivity offset lowers the price cap, thereby benefiting ratepayers. Election of the higher offset also permits the LEC to retain a larger share of its earnings, thereby benefitting the LEC if it can increase its productivity. *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2641.

productivity gains in excess of the target are rewarded with higher earnings than they could achieve under rate-of-return regulation. Price cap carriers are permitted to retain earnings in excess of the rate of return that the Commission has prescribed for rate-of-return carriers. Carriers also benefit because price cap regulation provides increased rate flexibility and is simpler to administer. Ratepayers benefit because the benchmark is designed to decrease rates relative to inflation at a faster pace than rates have historically decreased.

10. Under price caps, most increases and decreases in a carrier's cost of providing regulated service are treated as "endogenous" changes, *i.e.*, they do not result in adjustments to the carrier's PCI. The Commission, however, has identified certain cost changes, triggered by administrative, legislative, or judicial action that are beyond the control of the carriers, that should result in an adjustment to the PCI.<sup>10</sup> The Commission concluded that failing to recognize these cost changes by adjusting the PCI would either unjustly punish or reward the carrier by treating them as changes in the carrier's level of efficiency.<sup>11</sup> Accordingly, the Commission found that those types of cost changes should be treated "exogenously" in order to ensure that price cap regulation did not lead to unreasonably high or unreasonably low rates.

11. The Commission further determined, however, that not all changes beyond the carrier's control should be treated exogenously. For example, a general change in tax rates is outside the carrier's control, but will be reflected in the national GNP-PI component of the price cap formula.<sup>12</sup> Exogenous treatment of the tax change would thus unfairly "double count" its impact, once in the GNP-PI, and again as an exogenous cost. The Commission concluded that only changes that "uniquely or disproportionately affect LECs" would be considered for exogenous treatment.<sup>13</sup>

12. Section 61.45(d) of the Commission's rules, 47 C.F.R. § 61.45(d), lists the types of cost changes that may be eligible for exogenous treatment under the Commission's price cap plan. Examples of these cost changes include reserve deficiencies, changes in the Uniform System of Accounts (USOA) permitted or required by the Commission,

---

<sup>10</sup> *LEC Price Cap Order*, 5 FCC Rcd at 6807; *citing AT&T Price Cap Order*, 4 FCC Rcd at 3187.

<sup>11</sup> *LEC Price Cap Order*, 5 FCC Rcd at 6807.

<sup>12</sup> *Id.* at 6808.

<sup>13</sup> *Id.*

changes in the Separations Manual, and changes in the level of certain support payments and receipts.<sup>14</sup>

### C. The *OPEB Order*

13. After the Bureau, pursuant to delegated authority, required AT&T and the LECs to conform their regulatory accounting practices to SFAS-106, several LECs subject to price cap regulation filed tariff transmittals in 1992 that sought permission to treat the change in OPEB costs exogenously.<sup>15</sup> The Bureau suspended these transmittals and set them for investigation.<sup>16</sup> All price cap-regulated LECs were made subject to this investigation. On January 22, 1993, the Commission adopted an Order terminating the investigation and denying the LECs' requests for exogenous treatment of OPEBs.<sup>17</sup>

---

<sup>14</sup> Section 61.45(d) also considers exogenous the reallocation of investment from regulated to nonregulated activities, any tax law changes and other extraordinary exogenous cost changes as the Commission may permit or require, retargeting of the PCI to the level specified by the Commission for carriers whose base year earnings are below the level of the lower adjustment mark (10.25 percent), and inside wire amortizations.

<sup>15</sup> See Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 497 (filed Feb. 28, 1992); US West Communications, Inc. Tariff F.C.C. Nos 1 and 4, Transmittal No. 246 (filed Apr. 3, 1992); and Pacific Bell Tariff F.C.C. No. 128, Transmittal No. 1579 (filed Apr. 16, 1992).

<sup>16</sup> Treatment of Local Exchange Carrier Tariffs Implementing Statement of Financial Accounting Standards, "Employers Accounting for Postretirement Benefits Other Than Pensions," CC Docket No. 92-101, *Order of Investigation and Suspension*, 7 FCC Rcd 2724 (Com. Car. Bur. 1992). The Bureau designated the following issues for investigation: (1) whether the LECs had borne their burden of demonstrating that implementing SFAS-106 results in an exogenous cost change under the Commission's price cap rules; and (2) if these cost changes were treated as exogenous: (a) should costs associated with implementation of SFAS-106 prior to January 1, 1993 (when the accounting change becomes mandatory) be treated as exogenous; (b) were the assumptions made by the individual LECs in calculating these costs reasonable; (c) given these assumptions, had the individual LECs correctly computed the exogenous cost changes; and (d) were the individual LEC allocations of these costs among the price cap baskets consistent with Commission rules. *Id.* at 2725-26.

<sup>17</sup> Bell Atlantic, US West and Pacific Bell were ordered to file tariff revisions removing the OPEB material. *OPEB Order* at 1037.

14. The *OPEB Order* noted that the Commission previously had concluded that not all changes in GAAP are automatically entitled to exogenous treatment.<sup>18</sup> The *OPEB Order* also stated that the burden of proof is on the carrier seeking exogenous treatment and outlined the two-pronged test used to determine whether the Commission should permit GAAP changes to be treated exogenously.<sup>19</sup> The first prong requires the carrier to show that the cost change is not within its control. The second prong requires the carrier to show that the cost change has a "unique or disproportionate effect" on LECs, that is not already reflected in the price cap formula, for example, in the general inflation factor.<sup>20</sup>

15. As discussed above, the two types of OPEB amounts are "ongoing" amounts and "transitional benefit obligation" or "TBO" amounts. Ongoing amounts represent the accrual accounting of OPEBs that are booked when the employee earns the benefits. The TBO amounts represent the unfunded, accrued OPEBs existing as of the date the company implemented accrual accounting under SFAS-106. The *OPEB Order* addressed the two types of OPEBs separately.

16. With respect to the OPEB amounts accruing after the SFAS-106 change -- the ongoing amounts -- the Commission found that LECs have substantial control over the level of OPEB expenses. Accordingly, the *OPEB Order* found that the LECs failed the first prong of the exogenous cost test for going-forward amounts. With regard to the TBO amounts, the Commission stated that it did not have to resolve the control issue because the LECs failed to meet their burden of proving that the amounts claimed as the TBO had not already been accounted for in the GNP-PI -- the second prong of the test. Finally, the Commission indicated that it was not foreclosing further consideration of exogenous treatment of the TBO amounts based on a better and more complete record, suggesting the annual 1993 access tariff filings as a possible forum for such consideration.<sup>21</sup>

---

<sup>18</sup> *OPEB Order*, 8 FCC Rcd at 1026 citing *AT&T Price Cap Reconsideration Order*, 6 FCC Rcd at 674; *LEC Price Cap Reconsideration Order*, 6 FCC Rcd at 2663-65. The Commission concluded in the *AT&T Price Cap Order* that GAAP changes should not be treated in the same manner as USOA changes, which are always given exogenous treatment, for two primary reasons: GAAP changes are adopted by the FASB, while the Commission adopts USOA changes; and GAAP changes may or may not be reflected in GNP-PI. *AT&T Price Cap Order*, 4 FCC Rcd at 3017.

<sup>19</sup> *OPEB Order*, 8 FCC Rcd at 1026 and 1033

<sup>20</sup> *Id.* at 1033.

<sup>21</sup> *Id.* at 1037.

17. The LECs based their claim that implementation of SFAS-106 had a "unique or disproportionate effect" on LECs on one of two different economic studies: one prepared for the United States Telephone Association by Godwins, a research consulting firm; and one prepared for Pacific and Rochester Telephone Corporation (Rochester) by National Economic Research Associates, Inc. (NERA).<sup>22</sup> All of the price cap LECs except Rochester and Pacific submitted the Godwins Study in support of their direct cases in the *OPEB Order*. Rochester and Pacific submitted the NERA Study in support of their direct cases. Because Bell Atlantic, NYNEX and US West rely on the Godwins Study and Pacific relies on the NERA Study to support the PCI adjustments proposed in the instant transmittals, we summarize briefly the findings of those studies and the Commission's analysis of their conclusions.

18. The Godwins Study claims that OPEB costs are higher for LECs than other companies and that approximately 85 percent of the LECs' OPEB costs are not reflected in the GNP-PI. Godwins asserts that telephone company employees are older, leave the company before retirement less often, and retire at a younger age than employees in the economy as a whole. Godwins also contends that the LECs: have a higher retiree-to-employee ratio; offer coverage to a higher proportion of employees; and, have higher per-annum labor costs. The Godwins Study also claims that LEC labor costs represent a lower percentage of their total operating costs than those represented in the economy as a whole. Finally, Godwins assumes that LECs have pre-funded some of their SFAS-106 obligation while the economy as a whole has not. In light of these significant differences, the Godwins Study concludes that most of the impact of the change in accounting for OPEB costs will not be reflected in the GNP PI.

19. The NERA Study divides the U.S. economy into two sectors: a "cost-plus" (price regulated) sector, and all other industries. NERA assumes that only the cost-plus sector will pass through the effects of SFAS-106 in its prices; the other sector of the economy is assumed to be already reflecting the effects of SFAS-106 in its prices. The NERA Study concludes that SFAS-106 will increase GNP-PI by 0.12 percent but will increase costs to LECs by 1.1 percent. Thus, according to NERA, approximately 7 percent of the effect of SFAS-106 on the price cap LECs will be recognized in the GNP-PI, and the remainder should be allowed as an exogenous adjustment.

20. The *OPEB Order* stated that the two studies appear to be facially inconsistent. NERA assumed that companies factored accrued OPEB costs into their prices

---

<sup>22</sup> United States Telephone Association, "Post-Retirement Health Care Study Comparison of TELCO Demographic and Economic Structures and Actuarial Basis to National Averages" (1992)(Godwins Study); National Economic Research Associates, Inc., "The Treatment of FAS-106 Accounting Changes Under FCC Price Cap Regulation" (1992)(NERA Study).



in the past, while Godwins asserted that they only recently began to do so. The *OPEB Order* also indicated that the LECs failed to address several possible sources of double-counting OPEB costs. For all of these reasons, the Commission concluded that neither study demonstrated that SFAS-106 has a "unique or disproportionate effect" on LECs within the meaning of the test for exogenous treatment.<sup>23</sup>

21. The price cap LECs sought judicial review of the *OPEB Order* in the U.S. Court of Appeals for the District of Columbia Circuit. On July 12, 1994, the Court reversed and remanded the Commission order, finding that price cap LECs were entitled to treat changes in OPEB costs attributable to the implementation of SFAS-106 exogenously.<sup>24</sup> The Court concluded that this cost change was beyond the control of the LECs since the Commission has required the carriers to follow this accounting practice in recording OPEB costs in their regulated books of account.<sup>25</sup> The Court further found that the Commission had not justified its rejection of the Godwins and NERA studies.<sup>26</sup> The Court remanded the proceeding so that the Commission could address the issues that had been designated for investigation in the review of the LEC tariffs that proposed rate changes to reflect the increased OPEB expenses.<sup>27</sup> The FCC Did not reach those issues in its initial *OPEB Order* because it ruled against the LECS on the threshold eligibility issue.

22. Thus, while it is clear after the Court of Appeals decision that changes in LEC OPEB costs caused by the implementation of SFAS-106 are eligible for exogenous treatment, other issues remain that concern the specific adjustments that LECs may make to their PCI levels to reflect the cost change. Some of these issues are raised by the instant transmittals, such as whether OPEB cost increases caused by a LEC's implementation of SFAS-106 prior to January 1, 1993 are eligible for exogenous treatment. To the extent that the issues raised by the instant transmittals are not resolved by the Commission on remand of the *OPEB Order*, we will address them in our examination of these tariff filings.

---

<sup>23</sup> *Id.* at 1035.

<sup>24</sup> *Southwestern Bell Telephone Company v. FCC*, 28 F.3d 165 (D.C. Cir. 1994).

<sup>25</sup> *Id.* at 169-71.

<sup>26</sup> *Id.* at 171-72.

<sup>27</sup> *See* note 16, *supra*.

#### **D. 1993 Annual Access Tariffs and Investigation**

23. In their 1993 annual access filings, the Ameritech Operating Companies (Ameritech), Bell Atlantic, BellSouth Telecommunications, Inc. (BellSouth), GTE System Telephone Companies (GSTC), GTE Telephone Operating Companies (GTOC), the Lincoln Telephone and Telegraph Company (Lincoln), NYNEX, Rochester, Southern New England Telephone Company (SNET), Southwestern Bell Telephone Company (Southwestern) and US West Communications, Inc. (US West) sought exogenous treatment of transitional benefit obligation amounts.<sup>28</sup> In the 1993 annual filings, the LECs seeking exogenous treatment for OPEBs limited their requests to the incremental costs associated with the implementation of SFAS-106 for employees retiring before January 1, 1993, the date of SFAS-106 implementation. These exogenous costs total more than \$200 million. These carriers did not, in their 1993 annual access filings, seek exogenous treatment for TBO amounts covering then current employees.

24. On June 23, 1993, the Common Carrier Bureau suspended the 1993 annual access tariffs for one day and initiated an investigation.<sup>29</sup> The investigation is pending before the Commission.

### **III. DISCUSSION**

#### **A. Bell Atlantic and NYNEX Tariff Transmittals**

##### **1. Description**

25. In Transmittal No. 690, Bell Atlantic seeks exogenous treatment of TBO amounts for its active employees and for ongoing SFAS-106 amounts, less pay-as-you-go amounts already included in rates and Voluntary Employee Benefits Association (VEBA)

---

<sup>28</sup> See Ameritech Tr. 702 Description and Justification (D&J) at 10; Bell Atlantic Tr. 565 D&J at 4-21 - 4-22; BellSouth Tr. 105 D&J at A-11 - A-14; GSTC Tr. 38 D&J at 10; GTOC Tr. 781 D&J at 10; Lincoln Tr. 72 D&J at 15-16; NYNEX Tr. 176 D&J at 53-57; Rochester Tr. 187 D&J at 1-9; Southwestern Tr. 2271 D&J at 3-4 - 3-5; and US West Tr. 345 D&J at 2-14 -2-17.

<sup>29</sup> 1993 Annual Access Tariff Filings, CC Docket No. 93-193, National Exchange Carrier Association, Transmittal No. 556, Universal Service Fund and Lifeline Assistance Rates, CC Docket No. 93-123, GSF Order Compliance Filings, Bell Operating Companies Tariffs for the 800 Service Management System and 800 Data Base Access Tariffs, CC Docket No. 93-129, *Memorandum Opinion and Order Suspending Rates and Designating Issues for Investigation*, 8 FCC Rcd 4960 (Com. Car. Bur. 1993).

funded amounts, from January 1, 1991 through June 30, 1995.<sup>30</sup> Bell Atlantic proposes to increase its PCI and adjust its rates to recover \$6.5 million of exogenous costs through rate increases charged between October 16, 1994<sup>31</sup> and June 30, 1995.

26. In Transmittal No. 328, NYNEX seeks exogenous treatment of \$38 million, consisting of two discrete components. In its 1993 annual access filing, NYNEX sought exogenous treatment of \$8.07 million for TBO amounts accrued for retirees only. In its current filing, NYNEX seeks rate increases to cover the remaining OPEB costs of \$20.98 million that were not covered by its 1993 annual access tariff filing, including TBO amounts for current employees and ongoing OPEB costs. In addition, NYNEX requests a "make-whole adjustment"<sup>32</sup> to recover OPEB costs of \$37.59 million incurred during the period January 1, 1993 to October 16, 1994 -- the date that this transmittal was originally scheduled to take effect. NYNEX plans to recover this amount over 26.5 months and proposes to adjust its PCI and revise its rates to recover \$17.02 million over the initial 12 months.

## **2. Pleadings**

27. MCI Telecommunications Corporation (MCI) filed a petition to suspend and investigate the transmittals of Bell Atlantic and NYNEX<sup>33</sup> on September 16, 1994. MCI argues that the Commission's *RAO Letter 24*<sup>34</sup> bars recovery of OPEBs until those costs are actually incurred.<sup>35</sup> The LECs respond that *RAO Letter 24* is not applicable to SFAS-

---

<sup>30</sup> VEBA trusts are funding vehicles for, among other benefits, OPEBs, that generally forbid removal or transfer of funds except for the purpose for which they were established. See 26 U.S.C. § 501(c)(a).

<sup>31</sup> Bell Atlantic Transmittal 690 was originally filed on 45 days' notice and was scheduled to take effect on October 16, 1994.

<sup>32</sup> NYNEX does not give further explanation of those amounts which it characterizes as "make-whole."

<sup>33</sup> MCI's petition also requested suspension of Pacific Bell's Transmittal No. 1738, which is discussed in the next section.

<sup>34</sup> Accounting for Work Force Reduction Programs, *RAO Letter 24*, 9 FCC Rcd 1676 (Acct. and Aud. Div. 1994). This letter directs carriers to reflect work force reduction reported on their 1993 SEC Form 10-K filings for Part 32 purposes.

<sup>35</sup> MCI Petition at 6-7.

106 and is therefore not relevant.<sup>36</sup> Alternatively, MCI asserts that the OPEB amounts already included in the GNP-PI are still in controversy and must be determined before exogenous treatment may be granted.<sup>37</sup> The LECs argue that previously submitted Godwins and NERA studies demonstrate that there is no double counting in their exogenous claims.<sup>38</sup>

28. AT&T Corp. (AT&T), on September 16, 1994, filed a petition to reject or, alternatively, to suspend and investigate Bell Atlantic's Transmittal 690. AT&T argues that because the Commission mandated LECs to adopt SFAS-106 as of January 1, 1993, OPEB costs incurred prior to that date were incurred voluntarily by the LEC and are, thus, endogenous. Accordingly, AT&T asserts, SFAS-106 costs incurred prior to January 1, 1993 should not be afforded exogenous treatment.<sup>39</sup> The LECs contend that the FASB adopted SFAS-106 in December of 1990 and that the Commission's Order directing the LECs to adopt SFAS-106 required the LECs to convert to the new accounting treatment for OPEB costs "on or before" January 1, 1993.<sup>40</sup> Accordingly, the LECs contend that OPEB amounts incurred as a result of conversion to SFAS-106 any time after the adoption by FASB should be afforded exogenous treatment.<sup>41</sup>

### 3. Decision

29. The LEC claims for exogenous treatment for SFAS-106 costs presented in the transmittals under consideration in this Order involve complex cost calculations and represent the potential for significant rate increases. Most of the price cap LECs have rates in effect that are under investigation in CC Docket No. 93-193 for their TBO amounts for retirees.

30. A comparison of the TBO filings that are under investigation with the instant filings shows that no two LECs have followed the same methodology for determining the OPEB amounts for which they seek exogenous treatment. Different LECs use different time periods for when costs were incurred and for which recovery is sought. The

---

<sup>36</sup> Bell Atlantic Reply at 4; NYNEX Reply at 5; Pacific Reply at 3-6.

<sup>37</sup> MCI Petition at 7-8.

<sup>38</sup> Bell Atlantic Reply at 4-5; *see also* NYNEX Reply at 6-8; Pacific Reply at 6-8.

<sup>39</sup> AT&T Petition at 3-4.

<sup>40</sup> Bell Atlantic Reply at 2; *accord* NYNEX Reply at 3-4.

<sup>41</sup> *Id.*

allowance of SFAS-106 costs incurred prior to January 1, 1993 is at issue. Some LECs have VEBA trusts; others do not. The proper treatment of VEBA trust amounts and their effect on exogenous claims related to SFAS-106 is not settled. Moreover, the LECS use different percentage adjustments to avoid the double counting of OPEB amounts that are already reflected in the price cap inflation factor. In addition, TBO amounts claimed by the LECs are also based on a broad array of actuarial assumptions.

31. Based on our analysis of Bell Atlantic Transmittal 690 and NYNEX Transmittal 328, we find that these transmittals raise significant questions of lawfulness that warrant suspension for one day, investigation, and imposition of an accounting order. We will designate specific issues, parties to the investigation and establish a pleading cycle for this investigation in a subsequent order.

## **B. Pacific and US West Transmittals**

### **1. Description and Pleadings**

32. Pacific's Transmittal 128 and US West's Transmittal 550 include no actual revisions to the existing terms, conditions or rates contained in their FCC tariffs. Instead, Pacific and US West merely include in their transmittals cost support showing the recalculation of their PCIs, based on their OPEB amounts.<sup>42</sup>

33. MCI filed petitions to suspend and investigate the Pacific and US West transmittals. MCI argues that the PCI adjustments proposed by Pacific and US West to reflect OPEB cost increases violate *RAO Letter 24*,<sup>43</sup> which according to MCI, requires LECs to recognize OPEB costs when they are actually funded.<sup>44</sup> The LECs reply that *RAO Letter 24* is not applicable to SFAS-106 and therefore is not relevant.<sup>45</sup> MCI also objects to US West's allocation of interest associated with OPEBs and OPEB amounts to nonregulated activities.<sup>46</sup> Lastly, MCI contends that since the Commission has not

---

<sup>42</sup> US West's PCI adjustment does not include TBO amounts for retirees because it included those amounts in its 1993 annual access tariffs. Pacific, however, did not include OPEB costs in its 1993 annual access filing. Therefore, Pacific's PCI adjustment includes all OPEB costs.

<sup>43</sup> Accounting for Work Force Reduction Programs, 9 FCC Rcd 1676 (Acct. & Aud. Div. 1994)(*RAO Letter 24*).

<sup>44</sup> MCI Petition against US West at 6.

<sup>45</sup> Pacific Reply at 3-4; US West Reply at 3-4.

<sup>46</sup> MCI Petition against US West at 7.

determined the OPEB costs that are already reflected in the GNP-PI adjustments that the LECs made in prior annual access tariff filings, the PCI adjustments of US West and Pacific may "double count" some OPEB costs.<sup>47</sup> Pacific contends that the NERA study discussed above refutes MCI's contention.<sup>48</sup> US West claims that MCI's assertions are insufficient to justify suspension of Transmittal 550.<sup>49</sup>

## 2. Decision

34. A tariff transmittal that does not contain revisions to a carrier's tariff is not cognizable under our rules or under the Communications Act of 1934, as amended. The Commission's rules require carriers to "maintain" current PCI information, but the information is only subject to notice requirements<sup>50</sup> once rates are changed pursuant to the PCI adjustment.<sup>51</sup> Because neither Pacific nor US West has filed tariff changes with their transmittals, the matter is not properly framed for the Bureau to act upon. We therefore dismiss the transmittals of Pacific and US West as procedurally deficient. Because we are dismissing the transmittals of US West and Pacific, we also dismiss the petitions of MCI against US West and Pacific as moot.

35. We note, however, that if US West or Pacific makes tariff revisions in the future based upon their recalculated PCIs, they must submit those PCI calculations as part of the supporting documentation. Further, when a subsequent Order is released designating issues and parties to the investigation established herein, US West and Pacific will be named as parties to the investigation.

---

<sup>47</sup> *Id.* at 8.

<sup>48</sup> Pacific Reply at 3.

<sup>49</sup> US West Reply at 2-3.

<sup>50</sup> See Section 61.58 of the Commission's rules, 47 C.F.R. § 61.58, specifying notice requirements for tariff filings.

<sup>51</sup> See Section 61.45(a) of the Commission's rules, 47 C.F.R. § 61.45(a). That section provides rules requiring that LECs "subject to price cap regulation shall file adjustments to the PCI for each basket as part of the annual price cap tariff filing, and shall maintain updated PCIs to reflect the effect of mid-year exogenous cost changes." See also Section 61.49(a) of the Commission's rules, 47 C.F.R. § 61.49(a) ("each price cap tariff filing must be accompanied by supporting materials sufficient to calculate required adjustments to each PCI.").

## **V. ORDERING CLAUSES**

36. Accordingly, IT IS ORDERED that, pursuant to Section 204(a) of the Communications Act of 1934, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, the tariff revisions filed under Bell Atlantic Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 690 and NYNEX Telephone Companies Tariff F.C.C. No. 1, Transmittal No. 328, ARE SUSPENDED for one day from the currently scheduled effective date.

37. IT IS FURTHER ORDERED that, pursuant to Sections 4(i), 204(a), 205(a) and 403 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 204(a), 205(a) and 403, an investigation IS INSTITUTED into the lawfulness of the tariff revisions filed under Bell Atlantic Telephone Companies Transmittal No. 690 and NYNEX Telephone Companies Transmittal No. 328.

38. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 204(a) of the Communications Act of 1934, 47 U.S.C. §§ 154(i) and 204(a), and Section 0.291 of the Commission's rules, 47 C.F.R. § 0.291, that Bell Atlantic Telephone Companies and NYNEX Telephone Companies SHALL KEEP ACCURATE ACCOUNT of all earnings, costs, and returns associated with the transmittals that are the subject of this investigation, and of all amounts paid thereunder and by whom such amounts are paid.

39. IT IS FURTHER ORDERED that Bell Atlantic Telephone Companies and NYNEX Telephone Companies SHALL FILE tariff revisions reflecting this suspension no later than three business days from the release date of this Order. It should cite the "DA" number of the instant Order as the authority for this filing.

40. IT IS FURTHER ORDERED that Pacific Bell Transmittal No. 1837 and US West Communications Transmittal No. 550 ARE DISMISSED as procedurally deficient.

41. IT IS FURTHER ORDERED that the petition to suspend and investigate US West Communications, Inc. Transmittal No. 550, filed by MCI Telecommunications Corporation IS DISMISSED as moot.

42. IT IS FURTHER ORDERED that the petition to suspend and to investigate Bell Atlantic Telephone Companies Transmittal No. 690, NYNEX Telephone Companies Transmittal No. 328 and Pacific Bell Transmittal No. 1738, filed by MCI Telecommunications Corporation IS GRANTED IN PART, IS DENIED IN PART and otherwise IS DISMISSED as moot.

43. IT IS FURTHER ORDERED that the petition to reject or, in the alternative, to suspend and to investigate Bell Atlantic Telephone Companies Transmittal No. 690, filed by AT&T Corp. IS GRANTED IN PART and otherwise IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

A handwritten signature in black ink, appearing to read 'Kathleen M.H. Wallman', written in a cursive style.

Kathleen M.H. Wallman  
Chief, Common Carrier Bureau